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HIGH COURT A.P.

QUOTABLE POINTS

- * Once an eligibility criteria is stipulated in tender notice for consideration of a tender, it cannot be relaxed by the Authority which issued such tender in favour of an ineligible tenderer even if all the tenderers were ineligible, without calling for fresh tenders. (24-2-2011) 474
- * An officer of Court entrusted with execution of a judicial order is expected to act with responsibility as is beholden to uphold the majesty of the Rule of law. (28-1-2011) 492
- * Imputing dishonesty to a Judge even if the judgment contains errors, can be no excuse – It amounts to scurrilous attack on the Judge amounting to contempt of court. (19-1-2011) 405

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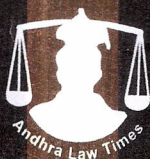
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of judicial officers with integrity, sensitivity towards Rule of Law, human values, good experience at Bar, legal qualifications and legal acumen and continuing legal education should be encouraged.

There is no doubt that the proposed law is the need of the day and it aims at achieving judicial transparency and accountability and is the first step in that direction in our country's 63 years of independence. The Chief Justice and the collegium can appoint the committees to look into the complaints and evaluate the performance of the existing judicial officers and if any material sufficient to initiate action is available and found, may refer the complaints to the Speaker or the Chairman of the Lok Sabha or Rajya Sabha respectively for initiating necessary proceedings through the members of Parliament before the Bill is made into a Statute.

RIGHT TO INFORMATION : SUGGESTIONS FOR EFFECTIVE IMPLEMENTATION

By

Dr. Mukunda Sarda

1. The Indian heritage for educational information and the ideas of creativity is evidenced by Rig Veda.¹ Justice P.N.Bhagwati observed: "No democratic Government can survive without accountability and the basic postulates of accountability is that the people should have Information about the functioning of the Government....."

- A Study in the light of the Right to Information Act, 2005
- Professor, Principal & Dean of the Bharati Vidya Peet University, New Law College, Pune
- 1. Rig Veda 1-89-1 which enunciates "lot noble thoughts come to us from every side".

Free flow of information is a pre-requisite of democracy".² Emile Zola observed: "When truth is buried underground, it grows, it chokes, it gathers such an explosive force that on the day it bursts out, it blows up everything with it".³ Hence, information must be true, authentic and accurate for people to form their opinion or decision – Information serves as the fuel of knowledge which is transformed into power to control the wielders of power and to make them accountable. Justice Mathews observed, "The responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption".⁴ The Right to Information Act, 2005 has been enacted for the purpose of securing information by the citizens from public authorities.

2. For the effective enforcement of the Act⁵ certain vital suggestions are made, and may be stated as follows:-

- (1) In spite of the fact that the Indian Judiciary has given an interpretation of widest amplitude to Art 19 (1)(a) so as to include 'freedom of the press' and other rights forming part of it, the need for incorporation of a separate amendment to Art 19 (1)(a) has been felt to the recognition of the 'Right to know'.

'The Right to know' besides being declared as a specific right, it should be treated as forming part of the 'basic structure of the Constitution', so that It is kept beyond the powers of the amending body to tamper with it i.e., immune from being amended, altered or destroyed;

- 2. *S.P.Gupta v. Union of India* (1981) Suppl. SCC P.87.
- 3. Quoted by Justice V.Krishna Iyer in "freedom of Information" East Law book, 1990 P.35
- 4. *State of U.P. v. Raj Narain* (1975) 4 SCC P.428
- 5. The expression 'Act' refers to the Right to Information Act, 2005 throughout this study.

- (2) It is within the public knowledge that secrecy is being practiced in the conduct of meetings and in the maintenance of records by public authorities, which comes very much in the way of public access to information.

Steps are required to be taken towards holding of 'open meetings', 'open records' to support the right of the public to know the Government business;

- (3) Judicial pronouncements upholding the 'freedom of the press' have been interfered with through curbs on this freedom by undemocratic laws. There is an imperative need to free the press from the fetters of undemocratic laws which is an indispensable requisite for the effective realization of the 'people's right to know'.

Rules for standard interviews with public authorities be made, as in many cases, they are held without proper order.

- (4) Decisions of foreign courts touching the 'right to know' can be taken advantage of by the Indian judiciary. Publication such as an International case law book may be required, so that there is exchange of information by various Countries on the vital issue of 'Right to Know';
- (5) Right to know adjudications shall be published in the Gazette or in the alternate a separate law journal be published exclusively of such adjudications so that the public may get adequate information about the law;
- (6) There is an urgent need to make the 'right to know' conformable to the era of internet and information

technology,⁶ as otherwise most vital information may not become accessible to public. This will also bring about uniformity of the law applicable to alternatives to paper-based forms of communication, storage thereof and other related issues;

- (7) In the appointment of Information Commissioners, persons of excellent track-record of pro-active commitment to the transparency in governance be appointed, so that they act judiciously and they are kept away from political pressures. This will result in the effective realization of the 'right to know';
- (8) "Exclusive clauses 'relating to information pertaining to the allegations of corruption as well as violations of Human rights have to be done away with. Public interests should outweigh party/political interests. This will result in exposure of public scandals and effectively deter persons from wrong-doings;
- (9) The need to evolve some mechanism to expose corruption in judiciary and investigation of such cases, in such a manner without judiciary being defamed as a public institution is necessary. This needs regulation of the 'right to know';
- (10) The need to balance the conflicting interests of 'right to privacy' and the 'right to information' is imperative. This necessitates the enacting of law of privacy with suitable limitations on the right of privacy;
- (11) The implementation of the right of privacy is in the hands of the same bureaucracy, which is regulating the rights of citizens. Stringent penalty

6. For details refer to the Information Technology Act, 2000.

for the violations of the right to know has to be provided, as otherwise the right to know is reduced to a mere rope of sand;

- (12) Another serious impediment in acquiring information is the cost of acquiring information. This has to be reduced to affordable limits and the poorer sections of the society be exempted from paying the costs upon proof of poverty as may be laid down in the rules to be made;
- (13) Recourse to RTI Act may be avoided in 'routine information' which may be displayed at important public places;
- (14) Suitable provision should be made to enforce 'official duty to publish' with stringent penal consequences for violation of this duty. There is no doubt whatsoever that official duty to publish forms part of an essential ingredient of the 'law of the right to know';
- (15) Periodic pro-active disclosures under the Act should be made without default so that voluntary disclosures of information, which every citizen needs from time to time is made available. It is an essential duty of the Government to make such disclosures through internet, so that transparency forms an essential functioning in matters of Government affairs;
- (16) Under the Act, reasons are not required to be given, while seeking information. However, sufficient safeguards are needed to protect the misuse of information such as black-mailing individuals or harassing honest public officials. It is therefore, necessary to make such use of information open to public scrutiny. What the person does with the

information must be open to public scrutiny;

- (17) In matters of 'public contracts' pro-active disclosures are necessary at various stages to ensure transparency as well as subject such issues to public scrutiny. This will result in prevention of public scandals or scams at the very initial stages;
- (18) Wherever the Central and State laws are divergent, the need to have the uniformity is most desirable, as otherwise the right to know available under central law may be denied under the State law or vice-versa;
- (19) In view of many changes in the Election laws, lot of information is available about the candidates contesting the electoral offices. However, the source of electoral funding information is not available. In the result, candidates resort to various types of malpractices in getting elected by spending money which is unaccountable and non-disclosable. Steps have to be taken to make this information available;
- (20) Audited accounts of political parties and the matters relating to inter party democracy are not publicly available. As a result, many acts violating election law take place, and undemocratic acts have been compromised. It is therefore, recommended that such matters be required to be disclosed publicly, as otherwise, it may lead to parties which are not democratic which may not be able to ensure the promotion of real democracy in the Country. The RTI Act needs a specific provision in this regard;
- (21) The report of election observers are not made public. Generally, it is regarded as a report for the electoral

machinery to take suitable action. Candidates as well as the general public are kept in dark. It must therefore, be a mandatory requirement that such reports be made public. This should be done without delay;

- (22) Many people in rural areas are not in a position to exercise their right under RTI Act, because of lack of knowledge and awareness of RTI Act. It is therefore, necessary to bring out pamphlets and resource books in regional media, by using simple and understandable language, laying down the basis, of how to use RTI law. This needs to be done on a war-footing without much loss of time, so that 'right to know' really becomes an effective enforceable right;
- (23) The subject of 'Right to know' needs to be introduced as a subject of study in secondary school level curriculum, so that it may contribute to the awareness of this subject for its effective enforcement. It is worth while to adopt, by all the states, the Maharashtra pattern where the subject of RTI is introduced in the curriculum at the secondary school level. It is interesting to study how it works, so that it becomes a role model for other states;
- (24) The various governments make tall claims of their achievements which are found to be unrealistic and false. This result in misleading the public and very much influences in the exercise of 'voting power' on the part of the electorates. It is therefore, recommended that the instrument of public hearing to provide platform for people to challenge and contest the claims of Government agencies. This mechanism should be used

widely and frequently, as and when, such claims are made by Government agencies. Only then patently illegal behavior of the State and its agencies will come to public notice, simultaneously making 'right to know' a reality;

- (25) Access to information about the 'missing' or 'disappeared' persons besides causing mental agony or suffering to relatives, is interfering with the 'right to life' guaranteed under Art. 21 of the Constitution, as in the absence of such information they are not able to regain freedom. Even the police authorities have failed to furnish such information for years together, reflecting on the bad functioning of the police department. Therefore, it is suggested that the information about the 'disappeared persons' be furnished to the relatives free of cost, without delay. The State Government has also an unconditional obligation to furnish the information, as it is one of the paramount duty of the State, to 'protect the life of its citizens';
- (26) Security forces are allotted "Unplanned Funds" beyond the scrutiny of democratic institutions. It is recommended that it shall be subjected to judicial scrutiny, so that the purpose of the utilization of funds, be known in order to prevent misuse or non-accounting of funds;
- (27) Steps to be taken to repeal Draconian Laws and provisions legitimizing impunity, particularly Armed Forces (Special Powers) Act and related laws in order to ensure accountability. Information relating to such issues must be made public;
- (28) There is an emergent need to Constitute an independent Judicial

Commission to investigate into all complaints of disappearance in Kashmir, Punjab and North Eastern regions, in order to give effect to a vital recommendation of the National convention on the 'right to information' held in New Delhi in 2004;

- (29) The need for citizens to form groups and come together in major issues exposing lack of governance in terms of proper public policy or corruption, is imperative. This will pave the way to acquire the strength of common good and lead to building up a stronger and more ethical civil society. Citizens must have an unqualified right to gather evidence of rampant fleecing of common people, starving to death in order to realize their 'right to life';
- (30) Citizens must be able to effectively use the 'right to information' to address issues of governance, and demand a rational basis for public policy, as in many cases the irrational framing of public policy decisions, caused unbearable hardships and injustice;
- (31) Power and responsibility should be proportionate. The need to take immediate steps for elimination of factors leading to divorce between power and responsibility is necessary. All power corrupts, absolute power corrupts absolutely is Lord Acton's thesis;
- (32) Reasons for the decision invariably and indispensably required to be given. Only then it is possible to have a decision based on discernible principles. Reasons for the decision act as an effective safeguard against nepotism, arbitrariness and corruption. Reasons also act as an internal check against arbitrariness in decision-making, and therefore, it should form an integral part of the 'right to know'. Besides complying with the principles of natural justice, access to reasons for decision make 'right to know' more effectively realizable;
- (33) Holders of public office should make choices on merit, while decisions being taken on public appointments, awarding of contracts or recommending for reward or benefits. Access to such decisions together with reasons makes the decisions transparent and accountable;
- (34) Holders of public office must submit their decisions subject to appropriate scrutiny, so that they may become accountable for wrong decisions resulting in injury or loss to public;
- (35) Constitutionally permissible limits should be duly considered and followed in imposing restraints on the 'right to information'. Keeping in view, the democratic fabric of the nation, restraints should be less, so as to make 'information' more accessible to public;
- (36) Care has to be taken that any restriction imposed on the 'right to information' does not deprive the very right itself. Omnibus exclusion clauses, such as noting on the file relating to any specific head of information should be avoided;
- (37) The need to take up on an urgent basis development educational programmes for the public, specially disadvantaged community, on the right to information is essential and must be done expeditiously;
- (38) Objectives of the right to information Act (RTI) can be carried out only

when officers are trained specifically for this purpose. This also needs preparation of training materials and developing the same, more particularly in the language of the state concerned. Such materials may also serve as 'user guide';

- (39) As the assets and liabilities of Government servants are in the public domain and can be accessed by any one, it is necessary for the state to bring out a list of officers with this information, like the seniority list of Government servants. Such lists brought out every year duly revised, may help in curbing corruption, misuse or abuse of powers and also dealing with cases of acquisition of assets by a Government servant disproportionate to the known sources of income;
- (40) It is necessary to have a norm, that the information which cannot be denied to the legislature, cannot be equally denied to citizens;
- (41) As in the case of Consumer Protection Act, where a retired judicial officer is heading Consumer Forums, so also the RTI Act must provide for retired judicial officers to be appointed as 'Information Officers'. The appointment of IAS or IPS Officers, being appointed as 'Information Officers', should be dispensed with / discouraged/ or done away with, as soon as possible;
- (42) Steps are to be taken expeditiously to ensure the independent functioning of 'Information Commission', so that disputes between the Government and its citizens relating to disclosure of information be decided judiciously. It is worth-while to emulate British example of appointing Richard Thomas (a leading lawyer) as 'Information Commissioner';
- (43) Failure to obtain information even after exhausting two internal appeals, recourse to civil courts must be allowed in certain cases and under certain circumstances duly prescribed. However, as per the existing Constitutional law, recourse to writ jurisdiction under Art. 226 and Art. 32 is available and cannot be denied;
- (44) More pro-active disclosures must be ensured by amending the RTI Act;
- (45) Every Govt. Dept., should bring out citizen's charter listing out all relevant information on what the public is entitled to know and get, without any kind of default;
- (46) Penalty provisions for violation of RTI Act should be made more stringent in cases of deliberately tampered or false information furnished to the applicants;
- (47) Right to Information Act should actively assist in the realization of the Fundamental Rights like 'Right to Food' etc. The role of the officials as 'gate-keepers of official Secrets Act' must change to that of 'gate-keepers of RTI Act';
- (48) No application of any restriction, should be applied to papers like Cabinet papers (Including records of council of ministers, secretaries and other officials). The standard of restriction should be subject to judicial scrutiny and must be confined to security, Foreign Policy, defence and public safety. However, the reasonableness of restrictions is open to judicial review;
- (49) The Central and the State Govt., civil service conduct rules prohibiting Government Servants from communicating any official document to anyone without authorization and

also Sec. 123 of Indian Evidence Act prohibiting the giving of evidence from unpublished official records without the permission of the Head of Dept., concerned, require substantial modification by necessary amendment, to fall in line with the statutory right to information under RTI Act;

- (50) Low level of literacy and absence of communication tools and processes operate as serious impediments to the 'right to information'.
- (51) The standard of record-keeping in Govt., offices must substantially improve to facilitate easy access to information. The normal and usual ground of excuse for not making available the records as "Not Readily Traceable", 'Not Available Readily', or "Misplaced" and other such excuses must be made statutorily non-acceptable;
- (52) Constant and consistent efforts must be continuously made to promote technology, which could contribute to the improved and easy flow of information. This will help the 'right to information' as a real achievable right;
- (53) Public consultations and disclosures in environmental impact assessment regulations under certain circumstances, need effective enforcement, in order to get complete disclosures. This will obviate the necessity to seek judicial intervention to get such information;
- (54) Right to information is linked with other rights such as the right to food, security, environment, employment and other survival needs. Therefore, any undesirable restrictions on the "right to information" will adversely affect other rights making most of the

fundamental rights illusory. Sufficient steps have to be taken and other related issues duly examined, before any decision is taken to restrict the "right to information";

- (55) Computerization of all Govt., records in inter-connected net-works measures and other issues, has to be taken on a war-footing, as such a recorded directory is an indispensable necessity to adequately protect the "right to information". Senior officials should go through the draft to avoid any error creeping in Mis-Information should be avoided as it goes to the root of destroying the "right to information";
- (56) The need to establish computerized information centres to provide information to the public on essential sources including land records, Passports, Investigation of Offences, administration of Justice, issuance of Permits and Licenses, is imperative. State and Central Govt., should cooperate in establishing such centres ensuring transparency in order to develop and strengthen the cause of "right to information";
- (57) Necessary amendments should be made to RTI Act to provide information in case of urgent request involving 'life and liberty' by all Govt. agencies within (24) hours;
- (58) It is necessary to review periodically the efficacy of RTI Act and its performance in order to find the proper remedial measures. The review committee may be constituted so as to include all vital sections of the community, in order to freely express the deficiencies and draw-backs in the functioning and enforcement of RTI Act. It is suggested that the committee may meet thrice in a year;

- (59) Adequate steps must be taken to reduce the "Exclusion Clauses" to the basic minimum, as such clauses come very much in the way of preventing public access to information;
- (60) The principles and guidelines on the "right to information" as endorsed at the meeting of common-wealth Heads of Govt. held in November, 1999 should be incorporated in the RTI Act, to the extent not incorporated so far;
- (61) Refusal cases should state in writing the reasons supported by evidence, so that such cases may be reviewed. Ultimately the courts must have the final authority to decide;
- (62) Following the example set up by Maharashtra Govt. in establishing "Yeshwanth Rao Chavan Academy of development administration" to train officials in regard to "right to information" and the procedure for enforcing the rights, similar centres should be established in all the States;
- (63) Keeping in view the right of privacy of individuals, a "reasonable balance" must be struck, to balance the freedom of individual to know and matters of legitimate public interest;
- (64) Equality of opportunity is given in several rights such as education, public service and others, while interpreting Art. 14 of the Indian

Constitution. Such opportunities can be availed only, when adequate information is given in advance, RTI Act should contain a provision of providing such information to public without any application being made. The need to make an application seeking such information should almost be dispensed with, by requiring authorities to place more and more information in the public domain on their own; and

- (65) Since the major source of information is the News media, TV Channels and others, all such media sources should be brought under the purview of RTI Act, so that media sources on their own right have access to information, for making it available to public;

3. All the recommendations and suggestions made require the earnest consideration of all the authorities who are made responsible for effective enforcement of RTI Act. Nothing should be done which has the effect of making "the right to information" illusory or ineffective. The Success of democracy and maintenance of rule of law very much depends on the "right to Access" to information to all members of public, as otherwise, Govt. of the people, By the people or 'for the people' may assume the undemocratic character, making the Govt., a system of 'democratic dictatorship' or 'rule of men' displacing the 'rule of law'.

Journal Section Ends